

REMARKS

Claims 1, 2, 4-9, 11-16, 18-22 and 24-26 are pending in this application. All of the pending claims are rejected. Reconsideration is requested.

Claims 1, 2, 4-9, 11-14, 22, and 24-26 are rejected on the grounds of nonstatutory double patenting. In particular, the claims are rejected based on US 7,035,214 on the grounds that the pending claims would improperly extend the "right to exclude." The '214 patent describes transmitting data in a data communications network using a transmission control protocol in a manner which provides reduced acknowledgment control traffic, error recovery and congestion control. Claim 1 of the '214 patent recites determining, at the transmitter, if an acknowledgment to the keep-alive request is not received before expiry of the re-transmission time-out timer, whereupon the transmitter backs off for a predetermined period; detecting a missing data packet at the receiver; sending a negative acknowledgment from the receiver to the transmitter for the missing data packet, the receiver being unresponsive to any packets from the transmitter unless the receiver detects the missing data packet; and **decreasing, at the transmitter, the length of the congestion window in response to receipt of the negative acknowledgment.** The specification states that the congestion window determines the transmission rate. Consequently, the '214 patent claims decreasing transmission rate in response to negative acknowledgements.

Claim 1 of this application recites measuring a reliability of a communication link to the neighbor; periodically calculating a reliability factor for communicating with a neighbor based upon the reliability of the communication link to the neighbor; **varying a frequency for sending keep-alive messages to the neighbor based upon the reliability factor**; and sending keep-alive messages by the node to the neighbor in accordance with those steps. In other words, the frequency of sending keep-alive messages to the neighbor is a function of reliability of

communication with the neighbor. As described in the Abstract, the frequency of sending keep alive messages to a reliable neighbor may be lower than for an unreliable neighbor. Consequently, resources used to detect a failure would be related to likelihood of failure. Furthermore, the failure of a relatively frequently failing node would be detected more quickly.

Comparing the pending claims in this application with the issued claims in the '214 patent it should be apparent that the '214 patent describes a technique based on negative acknowledgements from the receiver as opposed to keep alive messages from the transmitter. Further, the claims of the '214 patent describe a congestion control technique based on changing transmission rate of (non-management) data packets whereas the pending claims recite changing the frequency of keep alive messages (management packets) based on reliability of the receiver. Note that the result of the claims of the '214 patent is congestion control whereas the result of the pending claims is use of failure detection resources commensurate with likelihood of failure. Both sets of claims describe communication between network nodes. However, the recited claim elements and results are fundamentally different. Applicant therefore asserts that the pending claims are patentably distinct from the claim of the '214 patent and respectfully traverses the rejection.

This application is considered to be in condition for allowance and such action is earnestly solicited. Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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